`IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 13 of 1999

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
KACHARJI GHEMARJI THAKORE & 1 - Opponent(s)

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Appearance :
MR SP HASURKAR, APP, for Appellant(s) : 1,
MR MC BAROT for Opponent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 01/10/2007

ORAL JUDGMENT

1. This appeal is directed against the judgement and order dated 19th November 1998 passed by the learned Judicial Magistrate, First Class, Sihori, in Criminal Case No.550 of 1987 whereby the learned Judge has acquitted the respondents of the offences alleged against them i.e. Sections 324, 326, 504 and 114 of IPC.

2. The short facts of the prosecution case is to the effect that the respondents-accused on 11.6.1987 went to the place of complainant Mulji Andaji Thakore and abused him and caused cased injury to the complainant. Therefore a compliant came to be filed against the respondents for the alleged commission of offences punishable under sections 326, 324, 504 and 114 of IPC.

3. The case was numbered as Criminal Case No.550 of 1987. After recording necessary evidence the learned Magistrate acquitted the respondents of the offences with which they were charged by the aforesaid judgement and order. It is against the said judgement and order the present appeal has been filed at the instance of the State.

4. Mr. S.P. Hasurkar, learned APP, appearing for the appellant submitted that there is sufficient evidence on record to show that the accused have committed the alleged offence. He submitted that the evidence of prosecution witness Jahaben Hiraji who was examined by prosecution at Exh.20 and she has fully supported the case, but the learned Judge

has committed an error in holding that this prosecution witness is an interested witness and the same is not reliable. He further submitted that the evidence of medical officer shows that the injuries found on the body of the injured could be possible by muddamal dharia, and therefore, there is no reason to disbelieve this prosecution witness. He, therefore, submitted that the appeal deserves to be allowed.

5. Mr. Barot, learned Advocate appearing for the respondent submitted that the learned Magistrate has considered all the aspects and evidence on record and did not find sufficient evidence to convict the respondents and therefore this Court may not interfere with the impugned judgement and order.

6. At the outset it is required to be noted that the scope and power of the appellate court to interfere in appeal against acquittal is now well settled. In the case of State of Goa Vs. Sanjay Thakran, reported in (2007)3 SCC 755, the Apex Court held that the appellate court can review the evidence and interfere with the order of acquittal only if the approach of lower court is vitiated by some manifest illegality or the decision is perverse and the court has committed a manifest

error of law and ignored the material evidence on record. Para 16 of the said decision reads as under:

> "16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the court of appeal would not take the view which would upset the judgement delivered by the Court below. However,the appellate court has a power to review the evidence if it is of the view that the view arrived at by the court below is perverse and the court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate court, in such circumstances, to reappreciate the evidence to arrive at a just decision on the basis of material placed on record to find out whether any of the accused is connected with commission of the crime he is charged with.

7. I have heard learned Advocates for he respective parties. As a result of hearing and perusal of the record it is found from the record that most of the witnesses have turned hostile and supported the prosecution case. Pahadji Ganeshji (Exh.21), Nagaji Bhagaji (Exh.24) and Rajuji Ganbirji (Exh.30) have turned hostile. According to the evidence the accused no.2 was not present at the scene of offence. According to the evidence of Jababen, when she reached the spot, there was no weapon in the hands of the accused. Thus, there are many contradictions in the evidence on record and the trial court has acquitted the accused of he offences alleged against them.

8. There is nothing on record to show that the approach of the trial court is vitiated by some manifest illegality or the decision is perverse and the court has committed a manifest error of law and ignored the material evidence on record. I am in complete agreement with the reasonings adopted and findings arrived at by the Trial court. However, I am not discussing the evidence of each witness in detail in view of the observations made by the Apex Court in the case of State of Karnataka Vs. Hemareddy, reported in AIR 1981 SC 1417 wherein it is held as under:

> "... This court has observed in Girija Nandini Devi V. Bigendra Nandini Chaudhary (1967)1 SCR 93: (AIR 1967 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

9. In the premises aforesaid, the appeal is required to be dismissed and is accordingly dismissed. R & P, if lying in this Court, shall be sent back forthwith.

[K.S. JHAVERI, J.]

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